Louis Dreyfus Canada Ltd., Employer-Petitioner and Allied Services Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees Union, Cases 5-UC-200

28 February 1984

## **DECISION AND ORDER**

## By Chairman Dotson and Members Zimmerman and Dennis

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before Hearing Officer Kevin J. Sturm. Following the hearing, and pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, the case was transferred to the National Labor Relations Board for decision. Thereafter, the Employer-Petitioner filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the hearing officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in the case, the Board finds:

Louis Dreyfus Canada Ltd. is a Canadian corporation engaged in the purchase and sale of grain and operates a grain elevator located at Port Covington, Baltimore, Maryland. During 1982, a representative period, the Employer received grain valued in excess of \$50,000 at its Port Covington location directly from points outside the State of Maryland, and shipped grain valued in excess of \$50,000 from its Port Covington location to points outside the United States.

The Union contends that the petition should be dismissed because the Employer is not an "employer" within the meaning of Section 2(2) of the National Labor Relations Act. The Employer-Petitioner, on the other hand, contends that jurisdiction is properly with the National Labor Relations Board.

Section 2(2) of the Act defines "employer" to exclude any person subject to the Railway Labor Act. Accordingly, we requested that the National Mediation Board determine the applicability of the Railway Labor Act to the Employer. In reply, the National Mediation Board advised:

The record . . . indicates that Louis Dreyfus is not engaged in common carriage activities, but merely performs the unloading of hopper cars at its own grain elevator. The movement of cars is incidental to that task. Louis Dreyfus is not directly or indirectly owned or controlled by, or under common control with, any carrier subject to the Railway Labor Act. . . . [T]he Board is of the opinion that Louis Dreyfus Canada, Ltd., is not a carrier subject to the Railway Labor Act. <sup>2</sup>

Therefore, we find that the Employer is engaged in commerce within the meaning of the National Labor Relations Act, and that it will effectuate the policies of the Act to assert jurisdiction.

On 1 July 1983, subsequent to the expiration of the most recent collective-bargaining agreement between the Employer and the Union, the Employer filed this petition by which it urges the Board to clarify the bargaining unit to exclude employees designated "watchmen" in the recently expired contract, because they are statutory guards. Based on the following evidence, we find that the employees in question are guards within the meaning of the Act.

The watchmen work on the premises of the Employer's grain elevator during nonoperating hours. They watch for unauthorized individuals entering the Employer's premises, ask intruders to leave, and report to the police and management any individuals who refuse to leave. The Employer prohibits employees from remaining on, or returning to, company property when they are not scheduled to work. Watchmen treat off-duty employees in the same manner as other intruders.

Watchmen make hourly rounds to 16 electronic devices into which they insert a key triggering a signal in a central office operated by a security service company. Watchmen also prevent vandalism, theft, and fires.

We find that the watchmen protect the Employer's property. This responsibility includes preventing off-duty employees and other unauthorized individuals from entering the Employer's premises. We conclude that the watchmen are guards within the meaning of Section 9(b)(3) of the Act,<sup>3</sup> which prohibits finding appropriate any unit that includes guards with other employees. We shall therefore exclude them from the unit of employees the Union represents.

<sup>&</sup>lt;sup>1</sup> The name of the Union appears as amended at the hearing.

<sup>&</sup>lt;sup>2</sup> Louis Dreyfus Canada, Ltd., 11 NMB No. 11 (Oct. 21, 1983).

## **ORDER**

IT IS HEREBY ORDERED that the existing recognized unit of all employees employed by Louis Dreyfus Canada Ltd. at its Port Covington Grain

Elevator, Baltimore, Maryland, and represented by Allied Services Division, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, is clarified to exclude all guards as defined in the Act.